IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND

MICHAEL L. SPENCE,	:	
Plaintiff,	:	
v.	:	Civil No. L-05-3127
	:	
NCI INFORMATION SYSTEMS, INC.	:	
Defendant.	:	

MEMORANDUM

Plaintiff Michael L. Spence filed this defamation and false light action against Defendant NCI Information Systems, Inc. ("NCI") in the Circuit Court for Anne Arundel County on September 21, 2005. NCI removed the action to this Court on November 18, 2005, pursuant to 28 U.S.C. § 1332. On August 29, 2008, following the close of discovery, NCI filed a Motion for Summary Judgment. Because the issue has been fully briefed, the Court will dispense with a hearing. See L.R. 105.6. For the reasons stated herein, the Court will, by separate order, GRANT Defendant's Motion for Summary Judgment.

I. BACKGROUND

A. Relevant Facts

Plaintiff Michael L. Spence was employed by Defendant NCI as a Computer Forensics Specialist from February through November of 2002. Mr. Spence worked at NCI's Forensics Center in Las Vegas, Nevada, through the company's contract with the United States Department of Energy ("DOE"). Mr. Spence's main duties were to conduct forensic examinations of computer systems in order to determine whether employees were using personal work computers for illicit purposes. During his tenure at NCI, supervisors Nanette Okuda and Brad Sexton, and other coworkers experienced difficulties in their dealings with Mr. Spence.

In his May 2002 performance review, Ms. Okuda's overall evaluation of Mr. Spence was mixed. She wrote that "while Mike is enthusiastic about his work, he does not recognize that his actions and words frequently have an adverse effect on NCI." Okuda Depo., Exh. C. In addition, she stated that while Mr. Spence "is very knowledgeable about computer forensics" and had "established a rapport with all the personnel" in the Forensics Center, his "attention to detail" regarding his administrative duties was "lacking." Id. Following the 2002 performance review, Ms. Okuda began keeping a log of Mr. Spence's performance problems at NCI, including episodes of "argumentative" behavior, poor work product, and missed deadlines. Okuda Depo., Exh. H. On August 2, 2002, Mr. Spence filed a charge of reverse sex discrimination with the Nevada Equal Rights Commission, upon his discovery that a coworker, Holly Dale, was receiving a higher salary than he. The case was later transferred to the EEOC, which ultimately dismissed the consolidated charges in February 2003 and issued Mr. Spence a right-to-sue letter.

In September 2002, Ms. Okuda placed Mr. Spence on a "performance improvement plan" in order to address and remedy his deficiencies in the following areas: (1) unprofessional behavior/interpersonal skills, (2) written communication, and (3) setting and meeting deadlines/priorities. See Okuda Depo., Exh. F. Ms. Okuda and Mr. Sexton disclosed the plan to Mr. Spence and met with him in order to discuss these performance issues, as well as to set goals and objectives. Shortly thereafter, Ms. Okuda was reassigned to another division of NCI and Mike Sanders was hired in her place. Mr. Sanders eventually assumed responsibility for NCI's entire DOE contract operations in Las Vegas.[1]

During the period in which Mr. Sanders served as Mr. Spence's supervisor, he noticed the same performance and behavioral issues that his predecessors had documented. See Sanders

[1] Mr. Sanders' promotion coincided with Mr. Sexton's demotion and eventual resignation from the company.

Depo., p. 23-30. On October 29, 2002, Mr. Spence caused a significant disruption during a multi-day training course offered to forensics specialists by the Federal Bureau of Investigation. A group of students, including Mr. Spence, "hacked" into their classmates' computers (including Ms. Dale's) and changed their root passwords, which prevented them from participating in the training session. Later that day, Mr. Spence was expelled from the class after making a derogatory remark about Ms. Dale. On the next day of class, the same prank was played upon Ms. Dale's computer, again causing a significant disruption. Mr. Spence was later determined to be the person responsible for "hacking" into Ms. Dale's computer. On November 1, 2002, Mr. Sanders terminated Mr. Spence.

In February 2003, Mr. Spence accepted a position as a Forensic Instructor for Computer Sciences Corporation ("CSC") in Linthicum, Maryland. In August 2003, while still employed at CSC, Mr. Spence applied for a position as a Computer Forensics Specialist for the Air Force Office of Special Investigations ("AFOSI"). As part of the application process, Mr. Spence knew that he would be subject to an extensive background check. AFOSI's employment investigation, called the "110 Investigation," consists of interviews of the applicant's current and former supervisors, coworkers, spouse, friends, and neighbors, and an investigation into the applicant's financial history. The results of the "110 Investigation" are documented in a detailed Report of Investigation ("ROI"), upon which AFOSI's internal applicant review board bases its recommendations for hire.[2]

During Mr. Spence's "110 Investigation," an AFOSI agent interviewed Ms. Okuda, Mr. Sexton, and Mr. Sanders. The words attributed to these individuals in the ROI[3] contain the

[2] The hiring decisions ultimately rest with the AFOSI Commander, although the Commander relies upon the recommendations of the review board in making his decision.

[3] The ROI, which was written and prepared by an AFOSI investigator, contains a combination of quotations, paraphrasings, and a summary of the interviewees' statements.

allegedly defamatory matter that is the subject of this suit. The statements at issue largely relate to the negative assessment of Mr. Spence's job capabilities and interpersonal skills. See Complaint, ¶¶ 13, 14 and 17. Also contained in Ms. Okuda's portion of the ROI is the suggestion that Mr. Spence "initiated a fistfight with a male co-worker in the office." Complaint, ¶ 14. Mr. Spence charges that NCI published this defamatory material with malicious intent. He supports this allegation by suggesting that his former supervisors knowingly deployed certain words and key phrases that were "red flags," intentionally chosen to reduce his chances of passing the "110 Investigation." In particular, Mr. Spence charges that the word "vindictive," which appears several times in the ROI, was known at NCI to be a "hot" or "redline" term that would impair his chances of being recommended for hire. See Docket No. 96, p. 16-19. Finally, Mr. Spence claims that these negative statements by his former supervisors were made "in direct retribution for his filing an EEOC Complaint against NCI." Docket No. 96, p. 15.

Following AFOSI's completion of the "110 Investigation" and ROI, Mr. Spence's application for employment with AFOSI was denied. The report stated that Mr. Spence was not recommended due to his "track record of problems with inter-personal skills," citing poor reviews from his former supervisors and coworkers, a dispute with a neighbor while he lived in Maryland, and other financial issues revealed in his application. Mr. Spence obtained a copy of the ROI through a FOIA request to the Air Force, and on September 21, 2005 he filed the instant lawsuit against NCI.

B. Procedural History

Discovery began in December 2005, but was soon delayed by Mr. Spence's efforts to obtain additional information from AFOSI concerning its reasons for rejecting his application. AFOSI had agreed to turn over its complete written file on Mr. Spence, but exercised its

discretion pursuant to the applicable Touhy regulations to prohibit any personal contact with its investigators and decision makers in this litigation.[4] On February 8, 2007, Mr. Spence filed a Motion to Compel the depositions of the AFOSI investigators and the hiring official who reviewed his application. Docket No. 58. The Court held a hearing on Mr. Spence's Motion in September 2007. In advance of the hearing, AFOSI submitted the declaration of Susan Knutson (formerly Jobe), AFOSI Chief of General Law.[5] Docket No. 74. For the reasons explained in the Court's Memorandum of January 10, 2008 (Docket No. 84), AFOSI's refusal to allow Mr. Spence to depose its Special Agents was upheld. The Court deemed that AFOSI's submission of declarations from Ms. Jobe and Col. Cheryl H. Thompson was sufficient to provide Mr. Spence with the information he sought.

II. STANDARD OF REVIEW

Summary judgment is appropriate, pursuant to Rule 56(c) of the Federal Rules of Civil Procedure, when "the pleadings, depositions, answers to interrogatories, and admissions on file, together with affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law." Celotex Corp. v. Catrett, 477 U.S. 317, 322-23 (1986). See also Felty v. Graves-Humphreys Co., 818 F.2d 1126, 1128 (4th Cir. 1987) (recognizing that trial judges have "an affirmative obligation" to prevent factually unsupported claims and defenses from proceeding to trial). A genuine issue of material fact is present "if the evidence is such that a reasonable jury could return a verdict for the nonmoving party." Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 248 (1986). In determining whether there is a genuine issue of material fact, the Court views the facts, and all reasonable inferences

[4] See United States ex rel. Touhy v. Ragen, 340 U.S. 462 (1951). For a more detailed account of the basis of this discovery dispute and its resolution, see Docket Nos. 61, 65, 68, and 84.

[5] Because the document was originally titled the "Declaration of Susan Jobe," we will continue to refer to Ms. Knutson as "Ms. Jobe" for purposes of simplicity.

to be drawn therefrom, in the light most favorable to the non-moving party. Pulliam Inv. Co. v. Cameo Properties, 810 F.2d 1282, 1286 (4th Cir. 1987). The non-moving party may not survive summary judgment, however, through the "mere allegations or denials of his pleading," but rather "must set forth specific facts showing that there is a genuine issue for trial." Anderson, 477 U.S. at 256; Felty, 818 F.2d at 1128.

III. DISCUSSION

A. Sufficiency of the Evidence: Ms. Jobe's Unsworn Declaration

As a threshold matter, Mr. Spence asserts that the evidence contained in Ms. Jobe's unsworn declaration cannot be used to support NCI's motion for summary judgment because the declaration would be inadmissible at trial. The only material facts at issue in Ms. Jobe's declaration are those included in Paragraph 14, in which she states her view of the reasons that Mr. Spence was not recommended for hire. Ms. Jobe concludes that the following aspects of Mr. Spence's ROI could have forestalled his application: (1) problems with his former employer, NCI, (2) problems with his neighbors, and (3) financial problems. Jobe Declaration, ¶ 14. Ms. Jobe also offers her opinion that, "[t]aken alone, any one of these issues is appropriate grounds for a decision not to hire an applicant for AFOSI duty, whether as a Special Agent or in a support position." Id. Mr. Spence seeks to exclude this statement by contesting the validity of an unsworn declaration as evidence during the summary judgment stage.

While NCI might be required to take additional steps in order to admit the declaration at trial, there is no barrier to its use in conjunction with a motion for summary judgment. Ms. Jobe's declaration was submitted pursuant to 28 U.S.C. § 1746, which provides that an unsworn declaration has "like force and effect" to a sworn affidavit if certified by the declarant "as true under penalty of perjury, and dated." See Roberts v. Genesis Healthcare Corp., 2007 U.S. Dist.

LEXIS 97878, at *9 (D. Md. April 23, 2007) (acknowledging that a declarant "must submit herself to the penalty of perjury" and "provide a date of execution" in her unsworn statement in order to satisfy 28 U.S.C. § 1746). See also Goldman, Antonetti, Ferraiuoli, Axtmayer, & Hertell v. Medfit Int'l, Inc., 982 F.2d 686, 689 (1st Cir. 1993) (when an unsworn written statement satisfied the requirements of 28 U.S.C. § 1746, "the district court was entitled to give it the same weight as an affidavit when it considered defendant's motion" for summary judgment). Cf. Green v. Mayor & City Council of Baltimore, 198 F.R.D. 645, 646 (D. Md. 2001). Ms. Jobe's unsworn declaration meets the prerequisites of 28 U.S.C. § 1746 and may, therefore, be submitted in support of NCI's motion for summary judgment.

B. Choice of Law

Mr. Spence also challenges NCI's Motion on grounds that Nevada tort law, rather than Maryland law, is controlling in this case. As a federal court sitting in diversity, we are obliged to apply the choice-of-law rules of the forum state. Wells v. Liddy, 186 F.3d 505, 521 (4th Cir. 1999). For tort claims, Maryland adheres to the rule of *lex loci delicti commissi*, the law of the place of harm, to determine the applicable substantive law. Naughton v. Bankier, 114 Md. App. 641 (1997). In defamation actions, the place of harm is traditionally identified as that where the defamatory statement was published, i.e. seen or heard by a third party. See Wells, 186 F.3d at 521-22. But in cases where the defamatory statements are published in multiple states, application of the *lex loci delicti* rule "becomes cumbersome, if not completely impractical." Liddy, 186 F.3d at 527. Consequently, courts in the Fourth Circuit have adopted the approach of the Restatement (Second) of Conflict of Laws when faced with multi-state defamation suits. See Abadian v. Lee, 117 F. Supp. 2d 481, 485-86 (D. Md. 2000).

The Restatement, in pertinent part, provides that "[w]hen a natural person claims that he has been defamed by an aggregate communication, the state of most significant relationship will usually be the state where the person was domiciled at the time, if the matter complained of was published in that state." Restatement (Second) Conflict of Laws § 150 (1971 & Supp. 1995). In applying this rule, courts often employ a balancing test which considers (1) the state of the plaintiff's domicile, (2) the state of the plaintiff's principal activity to which the alleged defamation relates, and (3) the state where plaintiff suffered the greatest amount of harm. Abadian, 117 F. Supp. 2d at 486 (citing Reeves v. American Broad. Co., 719 F.2d 602, 604 (2d Cir. 1983) and Jewell v. NYP Holdings, 23 F. Supp. 2d 348, 360 (S.D.N.Y. 1998)).

In this case, publication of the allegedly defamatory statements occurred in at least two states: (1) Nevada, where the AFOSI investigator interviewed Mr. Spence's former supervisors at NCI, and (2) Maryland, where the ROI was prepared and presented to the Command Applicant Review Board and, ultimately, to the AFOSI Commander.

Applying the Abadian balancing test, the Court finds that Maryland law controls in this case. Mr. Spence is currently domiciled in Maryland. Moreover, the alleged harm he suffered was his failure to receive a positive recommendation for employment with the Air Force. The events from which his application was most significantly damaged occurred at the AFOSI offices in Maryland, where the ROI was prepared and presented to the Command Applicant Review Board. The AFOSI Commander's final decision not to hire Mr. Spence also occurred in Maryland.[6] Although the alleged defamation referred to Mr. Spence's job performance while an employee of NCI in Nevada, the "state of most significant relationship" is Maryland.

[6] In addition, the interviews of Mr. Spence's neighbors occurred in Maryland. Although these statements are not included in this defamation action against NCI, the negative assessment of Mr. Spence's relationships with his neighbors likewise harmed his chances for hire with AFOSI.

Accordingly, the Court will apply Maryland tort law in determining the outcome of the instant suit.

C. Defamation Claim

In order to establish a *prima facie* case of defamation, Mr. Spence must demonstrate the following: (1) that NCI made a defamatory statement to a third person; (2) that the statement was false; (3) that NCI is legally at fault in making the statement, and (4) Mr. Spence suffered harm as a result. Gohari v. Darvish, 363 Md. 42, 54 (2001). See Holt v. Camus, 128 F. Supp. 2d 812, 815 (D. Md. 1999). A statement is defamatory if it "tends to expose a person to public scorn, hatred, contempt or ridicule, thereby discouraging others in the community from having a good opinion of, or associating with, that person." Batson v. Shiflett, 325 Md. 684, 722-23 (1992). NCI disputes the contention that the statements included in the ROI are defamatory, but asserts that this point is ultimately irrelevant because the statements are privileged under Maryland law.

1. *Absolute Privilege*

NCI claims that the statements included in the ROI are both absolutely and conditionally privileged. An absolute privilege grants complete immunity on the basis of the speaker's position or status. See Robert D. Sack, SACK ON DEFAMATION § 8.1 (2007). By contrast, a conditional or qualified privilege is defined not by the identity of the speaker, but rather, by the occasion on which the statement is made. Id.

In general, an absolute privilege attaches to certain communications made in the following settings: (1) judicial proceedings, (2) legislative proceedings, (3) executive publications, (4) consensual publications, (5) spousal publications, and (6) publications required by law. Gohari, 363 Md. at 55 n. 13 (citing Dan B. Dobbs, THE LAW OF TORTS, §§ 413-414 (2000)). Whereas an absolute privilege applies without regard to the speaker's state of mind, a

qualified privilege extends only to statements made without malice. Alford v. Genesis Healthcare, 2007 U.S. Dist. LEXIS 26196, at *16 (D. Md. Apr. 9, 2007); McDermott v. Hughley, 317 Md. 12, 23 (1989).

NCI asserts that the alleged defamatory statements are absolutely privileged because they were made in response to an investigation by a federal agency. NCI's position draws upon the Fourth Circuit's decision in Mangold v. Analytic Services, Inc., 77 F.3d 1442 (4th Cir. 1996), which held that employees of government contractors who make statements to investigators during an official investigation of the contract are immune from state tort liability.[7] It is uncertain whether this absolute privilege would apply to the facts of this case. As distinguished from the facts of Mangold, Mr. Spence, rather than the DOE contract, was the exclusive subject of the AFOSI investigation. The scope of AFOSI's "110 Investigation" was limited to Mr. Spence's employment history and was not a generalized inquiry into charges of corruption or malfeasance at NCI. Consequently, it is unclear, based on the facts before us, whether the same justification for extending governmental immunity to the private sector in Mangold would likewise apply here.[8] Nevertheless, the Court need not address this question at present because we conclude, *infra*, that NCI's statements are clearly subject to a qualified privilege under Maryland statutory and common law.

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[7] The Mangold decision extended the immunity recognized in Barr v. Matteo, 360 U.S. 564, and Westfall v. Erwin, 484 U.S. 292 (1988) to the private sector, in limited circumstances. In Barr and Westfall, the Supreme Court recognized an absolute immunity from state tort law liability for federal officials exercising discretion while acting within the scope of their employment. In Mangold, the court reasoned that Barr and Westfall immunity "is sufficiently broad to protect, as part of the sphere of discretionary government action, official decisions to investigate suspected fraud, waste, and mismanagement in the administration of government contracts." Id. at 1447. The court suggested, however, that Westfall immunity should be extended to private contractors only in those "narrow circumstances where the public interest in efficient government outweighs the costs of granting such immunity." Id.

[8] The Court further notes that Maryland law and the law of other states have developed a legal framework for evaluating employer reference cases. See Md. Courts and Judicial Proceedings Code Ann. § 5-423 (discussed *infra*). This area of law is carefully crafted to mediate between the intricacy of these situations, by safeguarding the flow of information between former and future employer, while providing a measure of protection for the former employee or applicant. Applying the absolute privilege in this case would bypass that careful mediation provided in Maryland's employer reference statute.

2. *Conditional Privilege*

In Maryland, a conditional privilege generally exists at common law "where, in good faith, [someone] publishes a statement in furtherance of his own legitimate interests, or those shared in common with the recipient or third parties, or where his declaration would be of interest to the public in general." Carter v. Aramark Sports and Entm't Servs., Inc., 153 Md. App. 210, 238 (2003) (citations omitted). See Mazer v. Safeway, Inc., 398 F. Supp. 2d 412, 429 (D. Md. 2005). While various circumstances or relationships are potentially covered by the conditional privilege, courts have repeatedly held that "communications arising out of the employer-employee relationship clearly enjoy a qualified privilege." McDermott, 317 Md. at 28-29 (citations omitted). Unlike the absolute privilege, which exists regardless of the purpose or motive of the speaker, a qualified privilege is conditioned upon the absence of malice and can be forfeited if the privilege is abused. Batson, 602 A.2d at 1215; DiBlasio v. Kolodner, 233 Md. 512, 522 (1964). See Orrison v. Vance, 262 Md. 285, 292 (1971) (if the qualified privilege is not "exercised in a reasonable manner and for a proper purpose," the speaker "will forfeit his immunity"). Pursuant to the Supreme Court's decision in New York Times v. Sullivan, 376 U.S. 254 (1964), the definition of "malice" which is sufficient to defeat the conditional privilege is characterized by "knowledge of falsity or reckless disregard for truth." See Marchesi v. Franchino, 283 Md. 131, 139 (1978).

In addition to the common law authority on the conditional privilege, Maryland statute offers a qualified privilege for employers that disclose information about job performance or their reasons for terminating a former employee, either (1) to a prospective employer, or (2) if requested or required by a federal, state, or industry regulatory authority. Md. Courts and Judicial Proceedings Code Ann. § 5-423(a). Moreover, the statute provides that an employer

who discloses this information enjoys a presumption of good faith unless the plaintiff shows, by clear and convincing evidence, that the employer: (1) acted with actual malice toward the former employee, or (2) intentionally or recklessly disclosed false information about the former employee. Md. Courts and Judicial Proceedings Code Ann. § 5-423(b).

In Maryland, "the existence of a conditional privilege is regarded as a question of law" for the court to decide, whereas the question of "whether the defendant has abused this privilege is normally a question of fact for the jury." Mazer, 398 F. Supp. 2d at 430. See Polanco v. Fager, 886 F.2d 66, 70 (4th Cir. 1989); Hughley v. McDermott, 72 Md. App. 391 (1987). Courts have decided, however, that in employer reference cases, "where the defamatory publication is [offered] in response to an inquiry and not volunteered, the defendant is afforded greater latitude in what he may say about the plaintiff without incurring liability." Happy 40, Inc. v. Miller, 63 Md. App. 24, 35 (1985). See Stevenson v. Baltimore Baseball Club, Inc., 250 Md. 482, 487 (1968). Consequently, a case may not proceed to trial if the plaintiff is unable to proffer evidence of actual malice. See Mazer, 398 F. Supp. 2d at 430; Szot v. Allstate Ins. Co., 161 F. Supp. 2d 596, 608 (D. Md. 2001); Rabinowitz v. Oates, 955 F. Supp. 485, 489 (D. Md. 1996).

Aside from unsupported allegations of malice, Mr. Spence offers no evidence that NCI's statements in the ROI were made with "knowledge of falsity or reckless disregard for the truth." Marchesi, 283 Md. at 139. Mr. Spence's assertion that his former supervisors knowingly used "hot button" or "redline" words, such as "vindictive," "rude," "chauvinistic," or "disrespectful," in order to "purposely eliminate[] his chance for approval by the Air Force" is an allegation entirely without evidentiary support. See Spence Affidavit. Mr. Spence also charges that NCI made these statements "in direct retribution" for his filing an EEOC complaint against the company. Id. Again, there is no evidence in the record from which a reasonable jury could

conclude that Mr. Spence's former supervisors offered their opinions of Mr. Spence's performance with malicious intent.[9] Finally, Mr. Spence disputes the veracity of a statement by Ms. Okuda which suggested that he had once "initiated a fistfight." See Spence Affidavit, ¶ 58. Whether or not this incident actually occurred, without providing evidence from which a reasonable jury could conclude that Ms. Okuda's statement was made with a reckless disregard for the truth, Mr. Spence's charges of malice cannot survive summary judgment.

Accordingly, the Court finds as a matter of law that NCI's statements about its former employee, Mr. Spence, to a prospective employer, AFOSI, are subject to a conditional privilege. The only evidence Mr. Spence offers in opposition to NCI's motion for summary judgment are the positive remarks included in his performance review and affidavits from potential witnesses who will testify as to his good reputation at NCI. This evidence is not sufficient to raise a material issue of fact, however, because it is not evidence from which a reasonable jury could find malicious intent by NCI. The Court will, therefore, grant summary judgment on Mr. Spence's defamation claim.

D. False Light Invasion of Privacy Claim

Mr. Spence has also asserted a claim for false light invasion of privacy. A publication unreasonably places a plaintiff in false light if: (1) the false light would be highly offensive to a reasonable person, and (2) the defendant knew or recklessly disregarded the falsity of the publicized matter and the false light in which the plaintiff would be placed. Ostrzenski v. Seigel, 177 F.3d 245, 252 (4th Cir. 1999); Bagwell v. Peninsula Reg'l Med. Ctr., 106 Md. App. 470, 514 (1995). Although distinct from the tort of defamation under Maryland law, the same absolute

[9] Mr. Spence argues that "it is abundantly apparent that the NCI supervisors who made the statements were annoyed and irritated at Mr. Spence for repeatedly asking for a raise and then filing an EEOC Complaint against NCI." Docket No. 96. Absent any additional support for this bare assertion, the Court cannot share in Mr. Spence's assessment. If his claim is to survive, Mr. Spence must provide some evidence beyond the realm of mere speculation.

and qualified privileges may likewise be asserted to shield NCI from potential liability. Mazer, 398 F. Supp. 2d at 431; Bagwell, 106 Md. App. at 514. Because this Court has found that NCI's statements are protected by a conditional privilege, NCI is entitled to summary judgment on the false light claim as well.[10] Therefore, Mr. Spence's failure to produce evidence of malice on the part of his former employer will prevent the case from proceeding to trial.

IV. CONCLUSION

For the foregoing reasons, the Court will GRANT Defendant's Motion for Summary Judgment. A separate order follows.

It is so ORDERED this 27th day of February, 2009.

/s/
Benson Everett Legg
Chief Judge

[10] In addition, the Court notes that Mr. Spence has likely failed to establish the affirmative elements of a false light claim. In particular, it is doubtful that Mr. Spence has satisfied the "publication" element of a false light claim, which requires a showing that the defendant disclosed private facts to the public at large. See Mazer, 398 F. Supp. 2d at 431; Furman v. Sheppard, 130 Md. App. 67, 77 (2000).